

## Wage and Hour Division, Labor

## § 784.153

performing the exempt operations may be. He may be the same employer who performed the prior processing or other exempt operation, another processor, or a wholesaler, as the case may be. As noted in § 784.138(b), the Department has not questioned the applicability of the foregoing rule where the operation is performed on frozen, salted, smoked, or cured fish.

### § 784.151 Operations performed after product is rendered nonperishable.

As indicated in § 784.138, after the character of the aquatic products as taken from nature has been altered by the performance of the enumerated operations so as to render them nonperishable (e.g., drying and cleaning sponges) section 13(b)(4) provides no exemption for any subsequent operations on the preserved products, unless the subsequent operation is performed as an integrated part of the operations named in the exemption which are performed by an employer on aquatic commodities described in section 13(b)(4) after receiving them in the perishable state. In the case of an employer who is engaged in performing on perishable aquatic forms of life specified in section 13(b)(4) any operations named in that section which result in a nonperishable product, the employment of his employees in the storing, marketing, packing for shipment, or distributing of nonperishable products resulting from such operations performed by him (including products processed during previous weeks or seasons) will be considered to be an integrated part of his operations on the perishable aquatic forms of life during those workweeks when he is actively engaged in such operations. The employees employed by him in such work on the nonperishable products are, accordingly, within the exemption in such workweeks.

### § 784.152 Operations performed on byproducts.

The principles stated in the two preceding sections would also be applicable where the specified operations are performed on perishable byproducts. Any operation performed on perishable fish scraps, an unsegregated portion of which is to be canned, would come

within the canning (not the processing) part of the exemption. Fish-reduction operations performed on the inedible and still perishable portions of fish resulting from processing or canning operations, to produce fish oil or meal, would come within the processing part of the exemption. Subsequent operations on the oil to fortify it would not be exempt, however, since fish oil is nonperishable in the sense that it may be held for a substantial period of time without deterioration.

### MARKETING, STORING, PACKING FOR SHIPMENT, AND DISTRIBUTING

### § 784.153 General scope of named operations.

The exemption from the overtime pay requirements provided by section 13(b)(4) of the Act extends to employees "employed in the \* \* \* marketing \* \* \* storing, packing for shipment, or distributing of any kind of" perishable aquatic product named in the section. An employee's work must be functionally so related to the named activity as to be, in practical effect, a part of it, and the named activity must be performed with respect to the perishable aquatic commodities listed in section 13(b)(4), in order for the exemption to apply to him. The named activities include the operations customarily performed in the marketing, storing, packing for shipment, or distributing of perishable marine products. For example, an employee engaged in placing perishable marine products in boxes, cartons, crates, bags, barrels, etc., preparatory to shipment and placing the loaded containers on conveyances for delivery to customers would be employed in the "packing for shipment" of such products. Salesmen taking orders for the perishable aquatic products named in the section would be employed in the "marketing" of them. Employees of a refrigerated warehouse who perform only duties involved in placing such perishable marine products in the refrigerated space, removing them from it, and operating the refrigerating equipment, would be employed in "storing" or "distributing" such products, depending on the facts.